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SERVICE DATE – MAY 26, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 1X)

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—IN
MIDDLESEX COUNTY, MA

Decided: May 26, 2006

By decision and notice of interim trail use or abandonment (NITU) served on October 12, 2001 (October 2001 decision), the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by New York Central Lines, LLC (NYC) of 4.80 miles of a line of railroad known as the Albany Division, Fitchburg Subdivision, extending from milepost QBS 0.00 at Framingham to milepost QBS 4.80 at South Sudbury, in Middlesex County, MA, subject to trail use, public use, and standard employee protective conditions.¹ The October 2001 decision authorized the Town of Sudbury to negotiate with the carrier for interim trail use/rail banking for the 1.4-mile portion of the line that extends north from the Framingham town line to the intersection of the former Penn Central Transportation Company line. The NITU negotiating period was extended through April 2, 2006, by decisions served on April 10, 2002, October 7, 2002, May 15, 2003, October 6, 2003, May 4, 2004, October 28, 2004, April 18, 2005, and November 8, 2005. The October 2001 decision also stated that, if consummation has not been effected by the filing of a notice of consummation by October 12, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. By decision served on November 8, 2005, the consummation date was extended until June 1, 2006.²

¹ Certain of the prior decisions or notices in this proceeding have embraced the related STB Docket No. AB-55 (Sub-No. 593X), CSX Transportation, Inc.—Discontinuance of Service Exemption—In Middlesex County, MA. CSX Corporation, CSX Transportation, Inc.'s (CSXT) parent company, and Norfolk Southern Corporation jointly acquired control of Conrail Inc. and its wholly owned subsidiary, Consolidated Rail Corporation (Conrail). As a result of that acquisition, certain assets of Conrail were assigned to NYC, a wholly owned subsidiary of Conrail, to be exclusively operated by CSXT pursuant to an operating agreement. The line authorized for abandonment in this proceeding is included among the property operated by CSXT pursuant to the NYC operating agreement. CSXT is the successor to NYC. See CSX Corp. et al.—Control—Conrail Inc. et al., STB Finance Docket No. 33388 (Sub-No. 94) (Supplemental Transaction) (STB served Nov. 7, 2003).

² The pendency of conditions, including trail use conditions, serves to extend the deadline for consummation of the abandonment until 60 days after the expiration, satisfaction, or removal of the legal or regulatory barrier to consummation.

On April 28, 2006, CSXT filed a letter seeking clarification regarding the length of the line that is covered by the extension of the consummation date and on May 10, 2006, CSXT filed a brief supplement to that request. CSXT states that it has not consummated the abandonment, has been unable to finalize negotiations with the Town of Sudbury, desires to continue to negotiate trail use/rail banking with the Town, and seeks a 180-day extension of time to negotiate trail use. CSXT also seeks a 180-day extension of the consummation date for the 4.80 miles that were the subject of the exemption in the October 2001 decision.³

The extension of the consummation date is deemed to cover the 4.80-mile line. Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, further extension of the negotiating period is warranted. See *Birt v. STB*, 90 F.3d 580, 588-90 (D.C. Cir. 1996); *Grantwood Village v. Missouri Pac. R.R. Co.*, 95 F.3d 654, 659 (8th Cir. 1996). Because an extension of the consummation notice filing deadline and the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d), the requested extensions will be granted. Accordingly, the NITU negotiating period will be extended until September 29, 2006, and the consummation notice filing deadline will be extended until November 28, 2006.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's requests to extend the NITU negotiating period for the 1.4-mile line segment described above, and to extend the time to exercise the abandonment authority for the 4.80 miles that were the subject of the exemption in the October 2001 decision are granted.
2. The negotiating period under the NITU is extended until September 29, 2006.
3. The authority to abandon must be exercised on or before November 28, 2006.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

³ Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.